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Palm Beach Metro Transportation, LLC and Amalgamated Transit Union, Local 1577. Case 12–CA–25789

May 30, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAMBER AND MEMBER LIEBMAN

This is a refusal-to-bargain case in which the Respondent is contesting the Union’s certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on March 20, 2008, the General Counsel issued the complaint on March 28, 2008, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union’s request to bargain following the Union certification in Case 12–RC–9265. (Official notice is taken of the “record” in the representation proceeding as defined in the Board’s Rules and Regulations, Sections 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On April 21, 2008 the General Counsel filed a Motion for Summary Judgment. On April 23, 2008, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

Ruling on Motion for Summary Judgment¹

In its answer and response, the Respondent admits its refusal to bargain, but contests the validity of the Union’s certification on the basis of its objections to conduct alleged to have affected the results of the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board’s powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Florida corporation with a principal place of business located at 6620 Lakeside Road, West Palm Beach, Florida, has been engaged in the operation of an intrastate para-transit service for Palm Beach County, Florida.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$250,000, and purchased and received at its West Palm Beach, Florida facility goods valued in excess of \$10,000 directly from points outside the State of Florida.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Amalgamated Transit Union, Local 1577, the Union, is a labor organization within the meaning of Section 2(5) of the Act.³

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the representation election held on August 10, 2007, the Union was certified on February 29, 2008, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full time and regular part time operators employed by the Employer performing para-transit duties for Palm Beach County out of its facility located at 6620 Lakeside Road, West Palm Beach, FL; excluding all other employees, professional employees, office clerical employees, guards and supervisors as defined in the Act.

² Thus, we deny the Respondent’s requests that the Board grant summary judgment to the Respondent, dismiss the complaint, and award the Respondent attorney’s fees and costs pursuant to the Equal Access to Justice Act, or remand the proceeding to Region 12 for hearing.

³ The Respondent’s answer neither admits nor denies the Union’s status as a labor organization. The Respondent, however, effectively stipulated in the underlying representation proceeding that the Union is a labor organization within the meaning of the Act. Accordingly, we find that the Respondent’s answer does not raise any issue warranting a hearing with respect to this allegation. See *All American Services & Supplies*, 340 NLRB 239 fn. 2 (2003).

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

About March 6, 2008, by letter, the Union requested that the Respondent recognize and bargain with it as the exclusive collective-bargaining representative of the unit. About March 17, 2008, by letter, the Respondent advised the Union that it would not bargain with it. At all material times the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees.⁴ We find that this failure and refusal constitutes an unlawful refusal to recognize and bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since about March 17, 2008, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to recognize and bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); and *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Palm Beach Metro Transportation, LLC, West Palm Beach, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with Amalgamated Transit Union, Local 1577, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and, if an understanding is reached, embody the understanding in a signed agreement:

All full time and regular part time operators employed by the Employer performing para-transit duties for Palm Beach County out of its facility located at 6620 Lakeside Road, West Palm Beach, FL; excluding all other employees, professional employees, office clerical employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its West Palm Beach, Florida facility, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 17, 2008.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

⁴ In its answer, the Respondent denies the complaint allegation that Daniel Ret is the chief executive officer of the Respondent, and that he is supervisor and agent of the Respondent within the meaning of the Act. However, in its response to the Notice to Show Cause, the Respondent only reiterates its denial of Ret's title. In any event, the Respondent's denials do not preclude summary judgment or raise material issues of fact warranting a hearing because the Respondent admits that it has refused to bargain with the Union.

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. May 30, 2008

Peter C. Schaumber, Chairman

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to recognize and bargain with Amalgamated Transit Union, Local 1577, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, recognize and bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All full time and regular part time operators employed by us performing para-transit duties for Palm Beach County out of our facility located at 6620 Lakeside Road, West Palm Beach, FL; excluding all other employees, professional employees, office clerical employees, guards and supervisors as defined in the Act.

PALM BEACH METRO TRANSPORTATION, LLC